129-26

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 100.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

OLIVER BECKWITH.

IN ERROR TO THE CIRCUIT COURT OF KOSSUTH COUNTY, STATE OF IOWA.

FILED OCTOBER 12, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 21, 1888.

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1 STATE OF IOWA, *ss:*

Circuit Court, 14th Judicial Circuit.

The answer of the judges of the circuit court of the State of Iowa in and for the fourteenth judicial circuit, in the within writ of error mentioned.

The record and proceedings whereof mention is within made and all things concerning the same are hereby respectfully certified to the justices of the Supreme Court of the United States of America within mentioned in a certain schedule to this writ annexed, as within it is commanded.

In testimony whereof N. B. Benham, the clerk of said court within and for the county of Kossuth, in the 14th judicial circuit of the State of Iowa, has hereunto subscribed his name officially and has caused the seal of said court to be hereunto affixed this 10th day of June, 1885.

[Seal of the Circuit Court, Kossuth Co., Iowa.]

N. B. BENHAM,
Clerk of the Circuit Court of the State of Iowa in & for Kossuth County.

2 *Schedule of Papers Hereunto Following.*

Copy of writ of error to the justice of the peace, marked "A."
Copy of return of justice to the writ of error, marked "B."
Copy of the judgment of affirmance, marked "C."
The original writ of error, marked "D."
The original bond, marked "E."
The bond on this writ of error, marked "F."
The citation and return thereon, marked "G."
The copy of original petition for writ of error, marked "H."
The assignment of error and prayer for reversal, marked "I."

N. B. BENHAM,
Clerk Circuit Court of Kossuth County, Iowa.

3 A.

Writ of Error on J. P.

STATE OF IOWA, }
Kossuth County, } *ss:*

The State of Iowa to John Kingery, Esq., justice of the peace in and for said county, Greeting:

Whereas the Minneapolis & St. Louis Railway Company has caused to be filed in the office of the clerk of the circuit court within and for said county of Kossuth, State of Iowa, the affidavit of Albert E. Clarke, setting forth the erroneous decisions in matters of law and

other illegalities and proceedings had before you in a certain action in which Oliver Beckwith is plaintiff and The Minneapolis & St. Louis Railway Company is defendant, and asking for issuance of a writ of error as provided for in the statute, a copy of which affidavit is hereto attached, we therefore command you with the least practical delay to return to the circuit court the record of the proceedings of said action, so far as they relate to the facts set out in said affidavit.

Witness N. B. Benham, clerk of said circuit court within and for said county of Kossuth, with the seal thereof hereunto annexed, at Algona, this 26th day of January, 1885.

4

N. B. BENHAM,
— *Circuit Court, Kossuth County.*

STATE OF IOWA, }
Kossuth County, } ss:

I hereby certify and return that I recovered the within notice on the 20th day of January, 1885, and I hereon the same day serve- the same on the within-named John Kingery by reading the same to — and in his presence and leaving with him a copy of the within notice, and also left with him a copy of affidavit and petition filed in the clerk's office.

D. A. HAGGARD,
Sh'iff Kossuth Co.

5 STATE OF IOWA, }
Webster County, } ss:

In Justice's Court in and for Kossuth County, before John Kingery, Justice of the Peace.

OLIVER BECKWITH, Plaintiff,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

I, A. E. Clarke, being duly sworn, say that I am and at all times hereinafter referred to was the attorney for the Minneapolis & St. Louis Railway Company, the defendant above named.

That said company is a railway corporation; that on the 29th day of December, 1884, the plaintiff, Oliver Beckwith, commenced a suit before said John Kingery, justice of the peace as aforesaid, against the said defendant, which said action was brought to recover double damages against the defendant on account of the alleged killing of certain hogs by the defendant's trains and engines, and the petition in said cause was and is in words and figures as following, to wit:

The plaintiff alleges that the defendant is a corporation
6 operating a railway under the laws of Iowa. Said railway is run and operated through the township of Luverne, Kossuth county, Iowa, and through Humboldt county, in said State. That on or about the 24th day of October, 1884, the defendant was using and operating its railway in and through Humboldt county, Iowa,

by running engines and cars thereon; that while so using and operating the same on the year and day aforesaid, at a point on their railroad in said county of Humboldt where the defendant had the right to fence the same but had not done so, the said defendant, by its agents and servants, run an engine and train of cars against and upon three hogs, the property of the plaintiff, of the value of fifteen dollars, whereby said hogs were killed; that on the 25th day of November, 1884, the plaintiff caused a written notice, accompanied with an affidavit of the killing of said hogs, to be served on E. E. Chase, the station agent employed in the management of the business of the defendant at Luverne, Iowa, in said county of Humboldt. A copy of said notice and of said affidavit are hereto attached, marked Ex's A & B. That the said defendant has neglected and refused to pay the value of said hogs. Wherefore plaintiff
7 demands judgment for twenty-four dollars, interest and costs.

J. C. RAYMOND,
Att'y for Pl'ff.

The following is Exhibit A, referred to in the petition:

To the Minneapolis & St. Louis Railway Company:

You are hereby notified that on the 24th day of October, 1884, while an engine and train of cars was being run and operated upon your railroad by your agents and servants in Humboldt county, Iowa, and at a point on said road in said county where you had the right to fence the same but had not done so, said engine was run against and upon one spotted hog of the value of 5.50 and one spotted hog of the value of $5.50 and spotted hog of the value of $4.00, and all of said hogs were of the value of fifteen dollars, whereby said hogs were killed; and you are therefore required to pay said sum of fifteen dollars within thirty — of the service of this notice. That said hogs were owned by the undersigned.

OLIVER BECKWITH.

The following is Ex. B, referred to in the petition:

STATE OF IOWA, } ss:
Kossuth County, }

8 I, Oliver Beckwith, being first duly sworn depose and say that on the 24th day of October, 1884, I was the owner of one spotted hog of the value of 5.50, a black spotted hog of the value of $5.50, one spotted hog of the value of $4.00; said hogs were about six months old; that on the said day said hogs were killed on the line of the Minneapolis & St. Louis railway by an engine being run against and upon said hogs by the agents and servants of the said railway company at a point on said road in Humboldt county, Iowa, where the said railway company had the right to fence their track, but had not done so.

OLIVER BECKWITH.

Subscribed and sworn to before me and in my presence by the above Oliver Beckwith the 24th day of November, 1884.

J. C. RAYMOND,
Notary Public.

And on the 7th day of January, 1885, the defendant duly appeared in said cause and filed the following answer:

9 *Answer.*

In Justice's Court in and — Humboldt County, before —— ——, Esq., Justice of the Peace in and for said County.

OLIVER BECKWITH, Plaintiff,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

The defendant, for its answer to the petition herein, says:

First Defence.

Denies each and every allegation thereof.

Second Defence.

Further answering, the defendant doth say that it is and at all times referred to in the petition has been a corporation existing under the laws of the United States and the States of Minnesota and Iowa, and owning and operating a line of railroad in and through the State of Iowa, which said line passes through the county of Humboldt aforesaid.

That the term of its corporate existence has not yet expired.

That its stockholders and members are and ever have been citizens of the United States.

10 That by the enactments of the Legislature of the State of Iowa and the terms and conditions of the statutes of said State, under and by virtue of which the plaintiff seeks to recover his damages in this suit, an unlawful and unjust discrimination is made between the liability imposed upon the defendant for killing or injuring live stock and animals by accident and without fault and the liability imposed upon other citizens and persons in like cases, whereby the defendant is denied the equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States, and is, by the enforcement of said enactments, statutes, and laws, compelled to pay owners of live stock injured or killed as aforesaid a sum double that which may be imposed upon other persons and citizens within the jurisdiction of said State of Iowa and the courts thereof for the accidental destruction or injury of the same class of property under like circumstances.

That the said statutes, enactments, and laws of the said State of Iowa and the rights and remedies guaranteed thereby are in con-

flict with the fourteenth amendment to the Constitution of the United States, and are, therefore, void.

And, because the plaintiff's alleged right to recover is based upon said void statutes, laws, and enactments, defendants says that
11 the plaintiff may not recover in this action.

Third Defence.

Defendant, for other and further answer and defence, doth say that section 1289 of the code of Iowa, under and by virtue of which the plaintiff seeks to recover double the value of the stock alleged to have been killed, as stated in his petition, is void, because the said statute was enacted in violation of section six, article one, of the constitution of the State of Iowa.

CLARKE & ERVIN,
Att'ys for Def't.

STATE OF IOWA, } ss:
Webster County, }

I, Albert E. Clarke, being first duly sworn, on oath say that I am one of the attorneys for the defendant in the above-entitled cause; that I have read the foregoing answer and know the contents thereof and have knowledge as to the statements therein made; that the statements are true, as I verily believe.

ALBERT E. CLARKE.

Subscribed and sworn to by the said Albert E. Clarke this 6th day of January, A. D. 1885.

[SEAL.]

R. S. GRAY,
Notary Public.

And thereupon the said cause was duly tried, the plaintiff
12 appearing in person and by J. C. Raymond, Esq., his attorney, and the defendant appearing by A. E. Clarke, its attorney; and the following evidence was taken in said case:

STATE OF IOWA, } ss:
Kossuth County, }

I, John Kingery, justice of the peace in and for Kossuth county, Iowa, do hereby certify that the within evidence of R. C. Kinkaid, Oliver Beckwith, J. C. Raymond, and Chas. Shields is a true transcript of all the oral evidence except admissions taken or offered in the within-entitled cause of Oliver Beckwith *vs.* The M. & St. L. R'y Co. and constitutes all the evidence in said cause, except the Exhibits A and B referred to in the testimony of said J. C. Raymond.

Dated at Luverne, Jan'y 7th, 1885.

JOHN KINGERY,
Justice of the Peace.

End of return of the justice.

13 In Justice's Court, before John Kingery, Justice of the Peace in and for Kossuth County, Iowa.

OLIVER BECKWITH

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY.

R. C. KINKAID, called for the plaintiff, was sworn and testified as follows:

Q. Do you know anything about any hogs being killed on or about the 24th of October down in Vernon township? No; I guess it is Humboldt township, east of here.

A. Yes, sir.

Q. Well, you may state what you know about it.

A. Well, I know that I found some hogs there cut to pieces on the track—three shoats.

Q. When did you find them?

A. Along in the middle of the afternoon.

Q. Any trains been running shortly previous to that?

A. No; I found them about six o'clock when I was coming in.

Q. In the afternoon?

A. Yes, sir.

Q. What trains had passed that afternoon—last train that had passed?

14 A. I think the passenger.

Q. By the looks of them how long had they been dead?

A. Well, they had not been dead more than—they was not there when I went out after dinner. When I came in at night I found them dead.

Q. How did they—they were on the track, were they?

A. No, sir; two of them, if I remember right, had got off the track, and the other laid.

Q. How was they cut?

A. Was cut pretty near through the center, the middle, of the hog.

Q. Look as though they were cut by some sharp instrument or something run over them? *Q.* Was they mangled and mashed up or just cut clean in two?

A. Well, they was cut clean in two—two of them was, and the other one was mangled up some.

Q. Blood on the track?

A. Yes; there was some.

Q. You at work for the railroad company, are you?

A. Yes, sir.

Q. Do you know whose hogs they was?

15 A. No, sir; I do not.

Q. Well, you may state what you done about it, if anything.

A. When I found the hogs I reported them to the nearest man; that was Mr. Beckwith, and he claimed the hogs.

Q. How much were the hogs worth, should you think, or do you know what hogs were worth at that time?

A. Well, I had a pretty good idea what hogs was worth?

Q. Well, what would you say these three hogs was worth when they was alive?

A. Worth four dollars apiece.

Q. How much were they worth after they was killed, if anything, in that shape?

A. Well, I would not give anything for them.

Cross-examination:

Q. What county was the hogs killed in—did you find them in?

A. Humboldt county.

Witness excused.

OLIVER BECKWITH, called for plaintiff, sworn, testified as follows:

Q. Who was the owner of these hogs that have been testified to that was killed *wo*n here?

A. They was my hogs.

Q. They was your hogs?

A. Yes, sir.

16 Q. You may state where you found them after they was killed.

A. Well, they laid right by the side of the track, just off from the side of the ditch like, at the side of the track.

Q. What shape was they in?

A. Well, there was one that was cut into right about the fore shoulders. Another one that got his hind parts all cut, mashed up, had drawn itself off from the track, and the other one was all mashed up, mangled up.

Q. That is all?

A. Another one that came home had its nose all mashed up. He got over it.

Witness excused.

J. C. RAYMOND, called for the plaintiff, was sworn and testified as follows:

On the 25th day of November I served a notice, accompanied by an affidavit of the killing of these hogs, upon E. E. Chase, station agent of the defendant's at Vernon township, Humboldt county, Iowa, and I say that the papers marked Ex. — and Ex. B are copies of the notice so served.

Witness excused.

Plaintiff rested.

17 CHARLES SHIELDS, called for the defendant, was sworn and testified as follows:

Q. Mr. Shields, where do you live?

A. Ft. Dodge, Iowa.

Q. What is your business?
A. Locomotive engineer.
Q. How long have you been locomotive engineer?
A. Ten years the 21st day of last October.
Q. What engine do you drive, passenger or freight engine?
A. Passenger train at present.
Q. You may state, Mr. Shields, whether or not hogs upon a railroad track endanger the locomotive or cars.

COUNSEL FOR PLAINTIFF: I object as immaterial.

A. I never considered it so, to the best of my judgment.
Q. You say you have been locomotive engineer for ten years?
A. For ten years.
Q. And your opinion professionally, then, is that hogs upon the track in front of a locomotive and train are not dangerous?
A. Are not dangerous so far as derailing the train is concerned.
Q. Or any danger to the train?
A. Or any danger to the train is concerned.

18 Witness excused.
Defendant rested.
Testimony closed.

And thereupon, the said cause being duly submitted, the said John Kingery, Esq., justice of the peace, before whom said cause was then and there tried, did find the issues against the defendant and in favor of the plaintiff, and did find that the plaintiff was entitled to recover double damages, to wit, the sum of twenty-four dollars, against the defendant, and judgment was then and there rendered by the said John Kingery against the defendant, The Minneapolis & St. Louis Railway Company, in favor of the plaintiff, Oliver Beckwith, in the sum of twenty-four dollars damages and the costs of said suit taxed at the sum of —— dollars.

And the defendant says that the said justice of the peace erred in rendering said judgment against the defendant for more than the actual value of the property.

Second. The defendant says that the said justice of the peace erred in rendering any judgment against the plaintiff.

Third. The justice erred in holding that there was any evidence upon which to render a judgment against the defendant for any sum, because there was no evidence tending to show that
19 the plaintiff's property was injured or killed by the defendant or through the acts of its agents, servants, or employés.

Fourth. It was error for the said justice of the peace to render judgment for more than the actual value of the property, because the statute under which he rendered such pretended judgment is in violation of the provisions of the 14th amendment to the Constitution of the United States, and is in violation of the provisions of the constitution of the State of Iowa.

Fifth. It was error in said justice to render any judgment against the defendant, because the defendant was not in any manner con-

nected with the alleged killing of plaintiff's property, and there is no evidence to sustain any such judgment.

Sixth. It was the duty of said justice to dismiss said cause at the cost of the plaintiff, and it was error not to do so.

Wherefore your affiant herein prays that an order issue from this court directing the said John Kingery, Esq., justice of the peace, to certify to the circuit court of this county the petition, the answer, the evidence, the judgment, and a complete transcript of his record and the judgment and all proceedings had in said cause as fully as the same were had before him, and the court cancel and set aside
20 the said judgment and remand the said cause to said justice of the peace, John Kingery, Esq., with orders to dismiss the same at plaintiff's cost.

And your petitioner further prays that the said Oliver Beckwith be adjudged to pay the costs of this proceeding.

A. E. CLARKE.

Subscribed and sworn to before me by the said A. E. Clarke this 24th day of January, 1885.

[SEAL.] ROBERT M. WRIGHT,
Notary Public for Webster County.

21 STATE OF IOWA, } ss:
Kossuth County, }

To the circuit court of said county:

In pursuance of the writ of error, a copy of which was served on me on the 26th day of January, A. D. 1885, and of the statute in such case made and provided, I, John Kingery, justice of the peace of Luverne township, in said county, do hereby certify and return to said court the docket entries.

B.

Return of Justice on Writ of Error.

OLIVER BECKWITH, Plaintiff,
vs.
MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

Before John Kingery, J. P., Luverne township, Kossuth county, State of Iowa.

Be it remembered that on the 29th day of December, A. D. 1884, said plaintiff filed herein *his as* his claim and cause of action against the defendant for the sum of twenty-four dollars, as justly due him as damages for killing three — owned by plaintiff, Oliver Beckwith. Thereupon I issued an original notice to the said defendant, Minneapolis and St. Louis Railway Company, returnable before me, at my office in Luverne township, on the 6th day of January, A. D. 1885,

at one o'clock p. m., and delivered the same to Stafford Godfrey, constable, for service, who returned said notice with his re-
22 turn thereon, from which it appears that he received said notice for service on the 29th day of December, A. D. 1884, and that he did on the 30th day of December, A. D. 1884, serve the same on the said defendant's ticket agent, E. E. Case, in the manner required by law in Luverne township, in said county of Kossuth, and State of Iowa.

Now, to wit, on this 6th day of January, A. D. 1885, this cause coming on for hearing, plaintiff appeared by himself and att'y, J. C. Raymond, and filed his petition.

Defendant appears by his agent, E. E. Case, and asked a continuance of 24 hours. Granted. Cost of continuance against defendant, $2.80.

January 7th.—Parties appeared. R. C. Gray appointed clerk by the court. J. C. Raymond appeared and filed amendment to petition. Defendant appeared, by A. E. Clarke, att'y for defendant, and filed his answer, after hearing evidence, which is hereto attached, and the defendant admitting the facts as alleged and claimed by plaintiff to be true, and that plaintiff, under the laws of Iowa, was entitled to recover of the defendant, but that it was against the constitution of the U. S.

Nevertheless, it was the duty of the court to obey the law
23 and enter judgment for plaintiff.

It is ordered by the court that the plaintiff have and recover of the defendant judgment for the sum of twenty-four dollars, with six per cent. interest per annum from date, together with the costs of this action, taxed at twelve & $\frac{55}{100}$, and cost of making this transcript at $\frac{50}{000}$ dollars, the items of which are in the margin hereof; also said original notice, the petition and amendment of plaintiff and answer of defendant are hereto attached.

Witness my hand at Luverne t'p, in said county, this 27th day of January, 1885.

JOHN KINGERY,
Justice of the Peace.

[On margin:]

Costs of This Action.

Justice fees:

Dock'ting case	50
Original notice	50
One subpœna	25
Two-day trial	2 00
Continuance	50
E't. judgment	50
For transcript	50
Total	$4 75

Cost for constable's fees:

Served two notices	1 00
Two copies	20
One mile	10
Served two subpœnas	30
One mile for each	20
Total	$1 80

Cost for witness fees:

2 days, Rob. Kincaid	1 00
One mile each day	20
2 days, C. F. Genrich	1 00
Two miles each day	40
One day, Chas. Shub	50
Thirty-four miles	3 40
Total	$6 50

24 *Petition.*

STATE OF IOWA, } ss:
Kossuth County, }

In Justice Court, before John Kingery, Justice.

OLIVER BECKWITH, Plaintiff,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD CO., *for* Defendant.

The plaintiff alleges that the defendant is a corporation operating a railway; that said railway is and was operative through the township of Luverne, in Kossuth county, Iowa, and through Humboldt and other counties in said State; that on or about the 24th day of October, 1884, the defendant was useing and operating its railway in and through Humboldt county, Iowa, by running engines and cars thereon; that while so useing and operating the same, on the year and day aforesaid, at a point on there said road in said county of Humboldt where the defendant had the right to fence the same, but had not done so, the said defendant, by its agents and servants, ran an engine and train of cars against and upon three hogs, the property of plaintiff, and of the value of fifteen dollars, whereby said hogs were then and there killed; that on the 25th day of November, 1884, the plaintiff caused a written notice,
25 accompanied with an affidavit of the killing of said hogs, to be served upon E. E. Case, the station and ticket agent employed in the management of the business of the defendant, at Luverne township, in said county of Humboldt. Copies of said notice and of said affidavit are hereto annexed and made a part of this petition, marked Exhibi- A and B; that same defendant has

neglected and refused to pay the value of said hogs; wherefor- plaintiff demands judgment for twenty-four dollars, int. and costs.

J. C. RAYMOND,
Att'y for Pl'ff.

26 EXHIBIT A.

To the Minneapolis & St. Louis Railroad Company:

You are hereby notified that on the 24th day of October, 1884, while an engine and train of cars was being run, operative upon your railroad by your agents and servants, in Humboldt county, Iowa, at a point on said road in said county where you had the right to fence the same, but had not done so, said engine was run against and upon one spotted hog of the value of five $\frac{50}{100}$ dollars, one spotted hog of the value of five $\frac{50}{100}$ dollars, one spotted hog of the value of four dollars; that all of said hogs were of the value of fifteen dollars, whereby said hogs were killed; you are therefore required to pay said sum of fifteen dollars within thirty days of the service of this notice; that said hogs were owned by the undersigned.

OLIVER BECKWITH.

27 EXHIBIT B.

STATE OF IOWA, } ss:
Kossuth County, }

I, Oliver Beckwith, being first duly sworn, depose and say that on the 24th day of October, 1884, I was the owner of one spotted hog, of the value of fife $\frac{50}{100}$ dollars; one black spotted hog, of the value of five $\frac{50}{100}$ dollars; one spotted hog, of the value of four dollars; said hogs were about six months old; that on the said day said hogs were killed on the line of the Minneapolis & St. Louis railway by an engine being run upon and against said hogs by the agents and servants of said railway company at a point upon said road in Humboldt county, Iowa, where the said railroad company had the right to fence their track, but had not done so.

OLIVER BECKWITH.

Subscribed and sworn to before me and in my *present* by the above-named Oliver Beckwith this 24th day of November, 1884.

[SEAL.] J. C. RAYMOND,
Notary Public.

28 *Amendment to Petition.*

STATE OF IOWA, } ss:
Kossuth County, }

In Justice- Court, before John Kingery, J. P.

OLIVER BECKWITH, Plaintiff,
vs.
MINNEAPOLIS & ST. LOUIS R. R. Co.

Plaintiff, as an amendment to his petition, alleges that the defend-

ant is a corporation doing business in the State of Iowa and owns the land thereof.

J. C. RAYMOND,
Att'y for Pl'ff.

Original Notice.

STATE OF IOWA, *Kossuth County:*

To Minneapolis & St. Louis R. R. Co.:

You are hereby notified that Oliver Beckwith claims of you twenty-four dollars as justly due him as damages for killing three hogs owned by plaintiff, Oliver Beckwith, and that unless you appear before me, John Kingery, a justice of the peace, at my office, in Luverne, in Luverne township, county and State aforesaid, on the 6th day of January, A. D. 1885, at one o'clock p. m., and make defense to said claim, judgment will be entered against you for the whole amount with interest and costs.

Witness my hand this 29th day of December, 1884.

JOHN KINGERY,
Justice of the Peace.

29 *Notice to Produce Defens-.*

STATE OF IOWA, }
Kossuth County, } *ss:*

In Justice- Court, before John Kingery, J. P.

OLIVER BECKWITH, Pl'ff,
vs.
MINNEAPOLIS & ST. LOUIS R. R. Co., D'f'd't.

To the Minneapolis & St. Louis Railway Company:

You are notified to produce on the trial of said action the notice & affidavit of loss or killing, which was served on you on or about the 25th of Nov., 1884, or secondary evidence will be given of this *contants.*

OLIVER BECKWITH, *Pl'ff,*
By J. C. RAYMOND, *His Att'y.*

This notice came into my hands — service on the 29th day of December, 1884, and I certify that I personal-y served the same on E. E. Case, the ticket agent of the within defendant, *att'y* reading said notice to him and delivering to him a copy of said notice, in Luverne t'w'p, Kossuth county, Iowa, on the 30th day of December, 1884.

STAFFORD GODFREY,
Constable in & for Kossuth County.

Fees:

Service	.50
Copy	.10
	.60

30 *Answer.*

In Justice's Court in and for Humboldt County, before John Kingery, Esq., Justice of the Peace in and for said County.

OLIVER BECKWITH, Plaintiff,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

The defendant, for its answer to the petition herein, says:

First Defence.

Denies each and every allegation thereof.

Second Defence.

Further answering, the defendant doth say that it is and at all times referred to in the petition has been a corporation existing under the laws of the United States and the States of Minnesota and Iowa, and owning and operating a line of railroad in and through the State of Iowa, which said line passes through the county of Humboldt aforesaid.

That the term of its corporate existence has not yet expired; that its stockholders and members are and ever have been citizens of the United Staates; that by the enactments of the Legislature of the
31 State of Iowa and the terms and conditions of the statutes of said State, under and by virtue of which the plaintiff seeks to recover his damages in this suit, an unlawful and unjust discrimination is made between the liability imposed upon the defendant for killing or injuring live stock and animals by accident and without fault and the liability imposed upon other citizens and persons in like cases, whereby the defendant is denied the equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States, and is, by the enforcement of said enactments, statutes, and laws, compelled to pay owners of live stock injured or killed as aforesaid a sum double that which may be imposed upon other persons and citizens within the jurisdiction of said State of Iowa and the courts thereof for the accidental destruction or injury of the same class of property under like circumstances.

That the said statutes, enactments, and laws of said State of Iowa and the rights and remedies guaranteed thereby are in conflict with the fourteenth amendment to the Constitution of the United States, and are therefore void.

And because the plaintiff's alleged right to recover is based upon said void statutes, laws, and enactments defendants says that the plaintiff may not recover in this action.

32 *Third Defence.*

Defendant, for other and further answer and defence, doth say that section 1289 of the code of Iowa, under and by virtue of which

the plaintiff seeks to recover double the value of the stock alleged to have been killed, as stated in his petition, is void because the said statute was enacted in violation of section six, article one, of the constitution of the State of Iowa.

CLARKE & ERVIN,
Att'ys for Def't.

STATE OF IOWA, } ss:
Webster County, }

I, Albert E. Clarke, being first duly sworn, on oath say that I am one of the attorneys for the defendant in the above-entitled cause.

That I have read the foregoing answer and know the contents thereof, and have knowledge as to the statements therein made.

That the statements are true as I verily believe.

ALBERT E. CLARKE.

Subscribed and sworn to by the said Albert E. Clarke this 6th day of January, A. D. 1885.

R. S. GRAY,
Notary Public.

33 *Evidence.*

In Justice's Court, before John King, Justice of the Peace in and for Humboldt County, Iowa.

OLIVER BECKWITH
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY.

R. C. KINKAID, called for the plaintiff, was sworn and testified as follows:

Q. Do you know anything about any hogs being killed on or about the 24th of October down in Vernon township—no, I guess it is Humboldt township, east of here?

A. Yes, sir.

Q. Well, you may state what you know about it.

A. Well, I know that I found some hogs there cut to pieces on the track—three shoats.

Q. When did you find them?

A. Along in the middle of the afternoon.

Q. Any trains been running shortly previous to that?

A. No; I found them about six o'clock when I was coming in.

Q. In the afternoon?

A. Yes, sir.

Q. What trains had passed that afternoon—last train that had passed?

A. I think the passenger.

34 Q. By the looks of them, how long had they been there?

A. Well, they had not been dead more than—they was not there when I went out after dinner. When I came in at night I found them dead.

Q. How did they—they were on the track, were they?

A. No, sir; two of them, if I remember right, had got off the track and the other one laid——

Q. How was they cut?

A. Was cut pretty near through the center—the middle of the hog.

Q. Look as though they were cut by some sharp instrument or something run over them?

A. Looked as though something had run over them.

Q. Was they mangled and mashed up or just cut clean in two?

A. Well, they was cut clean in two, two of them was, and the other one was mangled up some.

Q. Blood on the track?

A. Yes; there was some.

Q. You at work for the railroad company, are you?

A. Yes, sir.

35 Q. Do you know whose hogs they was?

A. No, sir; I do not.

Q. Well, you may state what you done about it, if anything.

A. When I found the hogs I reported them to the nearest man—that was Mr. Beckwith—and he claimed the hogs.

Q. How much were the hogs worth, should you think, or do you know what hogs were worth at that time?

A. Well, I had a pretty good idea what hogs was worth.

Q. Well, what would you say these three hogs was worth when they was alive?

A. Worth four dollars apiece.

Q. How much were they worth after they was killed, if anything, in that shape?

A. Well, I would not give anything for them.

Cross-examination:

Q. What county was the hogs killed in—did you find them in?

A. Humboldt county.

Witness excused.

36 OLIVER BECKWITH, called for the plaintiff, was sworn and testified as follows:

Q. Who was the owner of these hogs that have been testified to that was killed down here?

A. They was my hogs.

Q. They was your hogs?

A. Yes, sir.

Q. You may state where you found them after they was killed.

A. Well, they laid right by the side of the track, just off from the side of the ditch like, at the side of the track.

Q. What shape was they in?

A. Well, there was one that was cut in two right about the fore-shoulders. Another one, that got his hind parts all cut—mashed

up—had drawed itself off from the track; and the other one was all mashed up—mangled up.

Q. That is all?

A. Another one, that came home, had its nose all smashed up. He got over it.

Witness excused.

37 J. C. RAYMOND, called for the plaintiff, was sworn, and testified as follows:

On the 25th day of November I served a notice, accompanied by an affidavit, of the killing of these hogs upon E. E. Case, station agent of the defendants at Vernon township, Humboldt county, Iowa, and I say that the papers marked Ex. — and Ex. B. are copies of the notice so served.

Witness excused.
Plaintiff rested.

CHARLES SHIELDS, called for the defendant, was sworn, and testified as follows:

Q. Mr. Shields, where do you live?
A. Ft. Dodge, Iowa.
Q. What is your business?
A. Locomotive engineer.
Q. How long have you been locomotive engineer?
A. Ten years the 21st day of last October.
Q. What engine do you drive—passenger or freight engine?
A. Passenger train at present.
Q. You may state, Mr. Shields, whet-er or not hogs upon a railroad track endanger the locomotive or cars.

COUNSEL FOR THE PLAINTIFF: I object as inmaterial.

38 A. I never considered it so, to the best of my judgment.

Q. You say you have been locomotive engineer for ten years?

A. For ten years.

Q. And your opinion, professionally, then, is that hogs upon the track in front of a locomotive and train are not dangerous?

A. Are not dangerous so far as derailing the train is concerned.

Q. Or any danger to the train?

A. Or any danger to the train is concerned.

Witness excused.
Defendant rested.
Testimony closed.

39 OLIVER BECKWITH, Appellee,
vs.
MINNEAPOLIS & ST. LOUIS R'Y CO., Appellants.

And afterwards and on the 4th day of March, A. D. 1885, it being the third day of the regular March, A. D. 1885, term of the circuit court of the State of Iowa in and for Kossuth county, the following order and judgment of court was made herein in said cause, being in the words and figures following, to wit:

C.

Copy of the Judgment Entry.

OLIVER BECKWITH, Appellee,
vs.
MINNEAPOLIS & ST. LOUIS R'Y CO., Appellants.

And now, at this time, to wit, on the 4th day of March, 1885, it being the third day of the regular March, A. D. 1885, term of the circuit court of the State of Iowa in and for Kossuth county, this above-entitled cause coming on for hearing on motion of appellee to strike from the files and records of this court the evidence taken before the justice and the bill of exceptions therein, and said motion being duly argued by respective counsel and fully submitted to the court, is sustained, and this said cause is dismissed,
40 and it is ordered and adjudged by the court that the appellee, Oliver Beckwith, have and recover of and from the appellants, The Minneapolis & St. Louis R'y Company and S. J. Bennett, surety on bond, jugdment for amount of judgment rendered in justice court, to wit, twenty-four dollars, with interest at the rate of six per cent., together with the cost of this action, taxed at twenty and $\frac{65}{100}$ dollars; to all of which judgment and ord*re* of court the appellant at the time, by its att'ys, duly except-.

And afterwards and on the same day the said appellants request a certificate for appeal to the supreme court, which request is denied by the court.

STATE OF IOWA, }
Kossuth County, } *ss:*

I, N. B. Benham, clerk of the circuit court of the State of Iowa in and for said county, do hereby certify that the above and foregoing is a true and perfect transcript of the judgment entry of said circuit court confirming the judgment of the justice of the peace in said cause as fully as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the court-house, in Algona, in said county, this 10th day of June, A. D. 1885.

[Seal of the Circuit Court, Kossuth County, Iowa.]

N. B. BENHAM,
Clerk of said Court.

41 "D."

Original Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the State of Iowa in and for the fourteenth judicial circuit:

Because that in the records and process, and also in the rendition of judgment of a plea which is in the said court of Iowa, before you, being the highest court in the said State in which a decision could be had in the said cause between Oliver Beckwith, as plaintiff, and The Minneapolis & St. Louis Railway Company, as defendant, wherein was drawn in question the validity of a statute of the State of Iowa, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, manifest error hath happened, to the great damage of the Minneapolis & St. Louis Railway Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 19th day of March, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal Circuit Court U. S., Northern District of Iowa, Dubuque.]

A. J. VAN DUZEE,
Clerk U. S. Circuit Court, Northern District of Iowa.

[Endorsed:] Filed March 27, 1885. N. B. Benham, clerk circuit court.

42 E.

Appeal Bond, 108.

In Justice's Court of Kossuth County, Iowa.

OLIVER BECKWITH
vs.
MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY.

Know all men by these presents that we, The Minneapolis and

St. Louis Railway Company, as principal, and S. J. Bennett, as security, are held and firmly bound unto Oliver Beckwith in the penal sum of one hundred dollars; for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and assigns, firmly by these presents.

Dated this twenty-sixth day of January, A. D. 1885.

The condition of this bond is such that whereas the said Minneapolis and St. Louis Railway Company has appealed from the judgment or order of John Kingery, Esq., justice of the peace, and has taken a writ of error — the circuit court of the State of Iowa in and for the county of Kossuth, in a certain cause *in* wherein Oliver Beckwith is plaintiff and The Minneapolis and St. Louis Railway Company defendant, to the circuit court of the State of Iowa:

Now, if the said Minneapolis and St. Louis Railway Company shall pay all costs and damages that shall be adjudged against it, and that it will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment — order which the circuit court may render or order to be rendered by the justice of the peace aforesaid, not exceeding in amount or value the original judgment or order, and all rents or hire or damages to the property during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal, and all costs and charges that may be awarded thereon by said circuit court, then this obligation to be void; otherwise to be and remain in full force.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, *Principal*,
By A. E. CLARKE, *Its Attorney*.
S. J. BENNETT, *Securities*.

Approved this 26th day of January, A. D. 1885.

N. B. BENHAM,
Clerk of said Court.

[Endorsed:] Appeal bond. Oliver Beckwith *vs.* M. & St. L. R'y Co. Approved and filed January 26, 1885. N. B. Benham, clerk circuit court.

43 F.

Original Bond.

Supreme Court of the United States.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,
against
OLIVER BECKWITH, Defendant in Error.

Know all men by these presents that we, The Minneapolis & St. Louis Railway Company, as principal, and L. Blanden and —— ——, of the city of Fort Dodge, in the State of Iowa, as sureties, are held and firmly bound unto Oliver Beckwith, his heirs, executors, and ad-

ministrators, in the penal sum of one thousand dollars, to be paid to the said Oliver Beckwith, his heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, or administrators, firmly by these presents.

Dated this 24 day of March, 1885.

Whereas the above-named Minneapolis & St. Louis Railway Company hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the circuit — of the State of Iowa in and for the county of Kossuth, in the fourteenth judicial circuit:

Now, therefore, the condition of this obligation is such that if the above-named Minneapolis & St. Louis Railway Company will prosecute its writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY,
By A. CLARKE, *Its Attorney.*
L. BLANDEN.

—— ——.

Signed, sealed, and delivered in presence of—
T. O. LOVELAND.

44 STATE OF IOWA, } ss:
County of Webster, }

—— —— and L. Blanden, being each duly sworn, depose and say and each for himself says that he is worth the sum of one thousand dollars in property in the State of Iowa unincumbered and subject to execution.

L. BLANDEN.

—— ——.

Sworn to before me and subscribed in my presence by the said — this 24 day of March, A. D. 1885.

[Notarial Seal, Albert E. Clarke, Iowa.]

ALBERT E. CLARKE,
Notary Public, Webster County, Iowa.

STATE OF IOWA, } ss:
Webster County, }

I, M. H. Bliss, clerk of the circuit court of Webster county, Iowa, do hereby certify that I am acquainted with L. Blanden, the surety named in the foregoing bond; that the security in said bond is ample and I would accept and approve the same *is* offered in my county.

Witness my hand and the seal of said court this 24 day of March, 1885.

[Seal of the Circuit Court, Webster Co., Iowa.]

M. H. BLISS,
Clerk of the Circuit Court of Webster County, Iowa.

45 The within bond and the sureties therein are approved this 27 day of March, 1885.

N. B. BENHAM,
Clerk of the Circuit Court of Kossuth County, Iowa.

46 G.

Citation Served on Beckwith.

UNITED STATES OF AMERICA, *ss:*

To Oliver Beckwith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2nd Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the State of Iowa in and for the county of Kossuth, in the fourteenth judicial circuit, wherein The Minneapolis & St. Louis Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. H. Macomber, judge of the circuit court of the State of Iowa in and for the 14th judicial circuit, this 26th day of March, in the year of our Lord one thousand eight hundred and eighty-five.

JAS. H. MACOMBER,
Circuit Judge.

[Endorsed:] Citation.

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the State of Iowa in and for the fourteenth judicial circuit:

Because that in the records and process, and also in the rendition of judgment of a plea which is in the said court of Iowa, before you, being the highest court in the said State in which a decision could be had in the said cause between Oliver Beckwith, as plaintiff, and The Minneapolis and St. Louis Railway Company, as defendant, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, manifest error hath happened, to the great damage of the Minneapolis & St. Louis Railway Company, as by its complaint appears,

48 we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected,

the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 19 day of March, in the year of our Lord one thousand eight hundred and eighty-five.

[L. S.] A. J. VAN DUZEE,
Clerk of U. S. Circuit Court, Northern District of Iowa.

49 STATE OF IOWA, } ss:
Kossuth County, }

I, N. B. Benham, clerk of the circuit court of the State of Iowa in and for said county, do hereby certify that the above and foregoing is a true and perfect transcript of the writ of error in case of Oliver Beckwith *vs.* The Minneapolis & St. Louis R'y Co., as issued by the clerk of the U. S. cir. court, northern dist. of Iowa, as fully as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the court-house in Algona, in said county, this 10 day of April, A. D. 1885.

[Seal of the Circuit Court, Kossuth Co., Iowa]

N. B. BENHAM,
Clerk of said Court.

Sheriff fees for serving writ & citation		50
Milage	1	60
Copy		30
	2	40

D. A. HAGGARD, *Sh'ff.*

50 STATE OF IOWA, } ss:
Kossuth County, }

I, D. A. Haggard, sh'ff, being duly sworn, depose and say that I did, on the 12th day of April, 1885, personally serve the within citation and writ of error on Oliver Beckwith, the within-named defendant, by reading the within citation and writ of error to and in the presence of Oliver Beckwith, the within-named defendant, and left with him at his residence near Luverne, Iowa, a true copy of the within citation and writ of error.

D. A. HAGGARD,
Sh'ff Kossuth Co., Iowa.

Subscribed in my presence and sworn to before me by the said D. A. Haggard, sheriff of Kossuth county, Iowa, this 14th day of April, 1885.

[Notarial Seal, W. B. Quarton, Iowa.]

W. B. QUARTON,
Notary Public for Kossuth Co., Ia.

[Endorsed:] Filed April 15, 1885. N. B. Benham, clerk circuit court.

51 H.

Copy of Original Petition for Writ.

To the Hon. James H. Macomber, circuit judge of the fourteenth judicial circuit of the State of Iowa:

Your petitioner, The Minneapolis & St. Louis Railway Company, by its attorney, J. D. Springer, respectfully shows and alleges that on the — day of ——, 188–, —— —— commenced an action at law against your petitioner before —— ——, a justice of the peace in and for the county of ——, in the State of Iowa, for the recovery of — dollars damages for killing — by running over the same with a train of cars at point on its railway in the State of Iowa where it had a right to fence the same, but had not done so; that on the — day of —— said action came on for trial, and thereupon your petitioner interposed an answer alleging, amongst other things, that said — were so small as not to endanger the safety of the operations of your petitioner's railway nor the lives of its employés, nor of persons or property thereon, and that section 1289 of the code of 1873 of Iowa was in violation of the Constitution of the United States and void; that upon the issues so joined there was a trial which resulted in a judgment in favor of the plaintiff for — dollars and — dollars costs; that under the laws of Iowa no appeal could be taken from said judgment, but that your petitioner, pursuant to the laws of said State at the time of said trial, had a bill of exceptions taken, settled, signed, and made a part of the record in said action, embodying all the evidence adduced and all the proceedings on said trial.

52 And thereupon and on the — day of —— your petitioner had the record in said action removed by a writ of error into this court; that on the — day of —— this court affirmed the judgment of said justice of the peace upon said writ of error, and held and decided that said statute of Iowa was not in contravention of the Constitution of the United States; that all the foregoing facts appear in the records and proceedings in said action, in consequence whereof manifest error has resulted, to the great damage of your petitioner.

Wherefore your petitioner prays for an allowance of a writ of error, and such other process as may be necessary to secure the correction of the errors aforesaid in the Supreme Court of the United States.

J. D. SPRINGER,
Att'y for Petitioner, The Minneapolis & St. Louis R'y Company, Minneapolis, Minnesota.

Allowed:
JAS. H. MACOMBER,
Circuit Judge, 14th Judicial District, Iowa.

[Endorsed:] Filed March 27, 1885. N. B. Benham, clerk circuit court.

53 I.

Supreme Court of the United States. October Term, 1885.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,

vs.

OLIVER BECKWITH, Defendant in Error.

And now comes The Minneapolis & St. Louis Railway Company, plaintiff in error, by Thomas F. Withrow, its attorney, and says that in the records and proceedings aforesaid there is manifest error in this, to wit:

1st. The circuit court of the State of Iowa in and for the 14th judicial circuit erred in adjudging that section 1289 of the code of Iowa of 1873 was not repugnant to and abrogated by the Constitution of the United States.

2nd. Said court erred in affirming the judgment of the justice of the peace, and the plaintiff in error, The Minneapolis & St. Louis Railway Company, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it may have lost by occasion of said judgment.

THOS. F. WITHROW,
Att'y for Plaintiff in Error.

[Endorsed:] Filed March 27th, 1885. N. B. Benham, clerk circuit court.

[Endorsed:] Oliver Beckwith *vs.* Minn. & St. Louis R'y Co. Writ of error from Kossuth county, Io'a, 14th judicial circuit.

Endorsed on cover: Iowa, Kossuth county, circuit court. No. 100. The Minneapolis and St. Louis Railway Company, plaintiff in error, *vs.* Oliver Beckwith. Filed October 12, 1885.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 100.

The Minneapolis & St. Louis Railway Company

vs.

Oliver Beckwith.

In Error of the Circuit Court of Kossuth County, Iowa.

BRIEF FOR PLAINTIFF IN ERROR.

EPPA HUNTON,
Counsel for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 100.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

OLIVER BECKWITH.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The defendant in error instituted suit before a justice of the peace of Kossuth county, in the State of Iowa, to recover damages for three hogs belonging to defendant in error, which he alleged were killed by running an engine and train of cars belonging to plaintiff in error against and over them, and demanded judgment for twenty-four dollars, double the value of said hogs. Double value was demanded under the 1289th section of Code of 1873 of Iowa, which gave double damages to the owner of stock killed by any corporation operating a railway that fails to fence the same against live stock running at large at all points where such right to fence exists, and which fails to pay value of such stock, made under oath by said owner, in thirty days after notice.

On the 7th day of January, 1885, John Kingery, justice of the peace for the said county of Kossuth, rendered judgment

against the plaintiff in error for twenty-four dollars, double the value of the three hogs killed, with interest and costs. (See Record, page 10.)

This suit was defended before the justice of the peace by the plaintiff in error, and, among other defenses, the said plaintiff in error plead that the said law of Iowa giving double the value of live stock killed was in conflict with the Fourteenth Amendment to the Constitution of the United States and therefore void. (Record, pages 4 and 5.)

The plaintiff in error, under the laws of Iowa, had the record in said action removed by writ of error into the circuit court of the fourteenth judicial circuit of the State of Iowa, which circuit court affirmed the judgment of the said justice of the peace upon said writ of error, and decided that said section of said Code of Iowa was not in contravention of the Constitution of the United States.

This last-mentioned court, the circuit court of the fourteenth judicial circuit of Iowa, is the highest court in that State to which the case could be carried, and from its decision and judgment of affirmance the said railway company prosecutes this writ of error in this Court.

The case is brought into this Court under section 709 of the Revised Statutes of the United States, because it is claimed that the validity of the statute of the State of Iowa, to wit, section 1289 of the Code of 1873 of Iowa, was drawn in question upon the ground that it is repugnant to the Constitution of the United States, and the judgment of the highest State court to which it could be carried decided in favor of the validity of the said State law.

ASSIGNMENT OF ERROR.

The court below erred in rendering a decision in favor of the validity of section 1289 of the Code of 1873 of the State of Iowa, which is as follows:

"Any corporation operating a railway that fails to fence the same against live stock running at large at all points

where such right to fence exists shall be liable to the owner of any such stock injured or killed by reason of the want of such fence for the value of the property or damage caused, unless the same was occasioned by the willful act of the owner or his agent; and in order to recover it shall only be necessary for the owner to prove the injury or destruction of his property, and if such corporation neglects to pay the value of or damage done to such stock within thirty days after notice in writing, accompanied by an affidavit of such injury or destruction, has been served on any officer, station or ticket agent employed in the management of the business of the corporation in the county where the injury complained of was committed, such owner shall be entitled to recover double the value of the stock killed or damages caused thereto."

The validity of this State law was denied on the ground that it is repugnant to the Constitution of the United States, especially to that part of the Fourteenth Amendment which reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

But the court sustained the validity of said State law and affirmed the judgment of the justice of the peace for double value of the three hogs killed, although the Federal question was distinctly raised in the court belows.

ARGUMENT.

1st. The law, as contained in section 1289 of the Code of 1873 of the State of Iowa, is unconstitutional, because it conflicts with that portion of the Fourteenth Amendment of the Constitution of the United States which provides that no "State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Prior to the passage of the law of Iowa embodied in section 1289 of the Code the common law prevailed in Iowa which gave for injuring or killing of stock by any person, natural or artificial, only such damages as were actually inflicted by the negligence of the party killing. (See O'Ferrall *vs.* Simplot, 4 Iowa R., 381.) So that prior to the law found in section 1289 the plaintiff in error would not have been bound to pay for stock killed in running its cars, &c., more than the actual damage inflicted, to wit, the value of the property destroyed or for such injury as may have been done thereto, and to make it liable at all the railroad company must have been guilty of negligence and the owner of the property must have been free from all negligence contributing to the injury inflicted or the wrong done.

Corporations to the same extent as individuals are persons within the meaning of the Fourteenth Amendment.

Santa Clara Co. *vs.* Southern Pacific R. R. Co., 118 U. S. R., 396.
U. S. *vs.* Deveaux, 5 Cranch, 86.
Marshall *vs.* B. & O. R. R. Co., 16 How., 326.
R. R. Co. *vs.* Richmond, 96 U. S. R., 529.
See also the Railroad Tax Cases, 13 Fed. Reporter, 733.

Mr. Justice Field, in delivering the opinion of the Court in this case, says:

"Private corporations are, it is true, artificial persons, but with the exception of a sole corporation, with which we are not concerned, they consist of an aggregation of individuals united for some legitimate business, * * * and, as a matter of fact, nearly all enterprises in the State requiring for their execution an expenditure of large capital are undertaken by corporations. They engage in commerce; they build and sail ships; they cover our navigable streams with steamers; they construct houses; they bring the products of the earth and sea to market; they light our streets and buildings; they open and work mines; they carry water into our cities; they build railroads and cross mountains and deserts with them. * * * Indeed, there is nothing which is

lawful to be done to feed and clothe our people, to beautify and adorn their dwellings, to relieve the sick, to help the needy, and to enrich and ennoble humanity, which is not to a great extent done through the instrumentalities of corporations. * * * It would be a most singular result if a constitutional provision intended for the protection of every person against partial and discriminating legislation by the States should cease to exert such protection the moment the person becomes a member of a corporation. We cannot accept such a conclusion. On the contrary, we think it is well established by numerous adjudications of the Supreme Court of the United States and of the several States that whenever a provision of the Constitution or of a law guarantees to persons the enjoyment of property or affords to them means for its protection or prohibits legislation injuriously affecting it, the benefits of the provision extend to corporations, and that the Court will always look beyond the name of the artificial being to the individuals whom it represents."

Under these authorities we shall treat the plaintiff in error under this branch of the argument as a natural person who has undertaken to confer on the public the many benefits enumerated by the learned judge.

It has been shown that all persons in the State of Iowa are exempt from paying double damages, except those persons called corporations who operate a railroad that fails to fence its track where the right to fence exists. Then this person (any corporation operating a railway) is subject to a different rule of law, in the shape of double damages, from any other person in the State.

In Walley's Heirs *vs.* Kennedy, 2 Yerg., 554, the doctrine is held and ably enforced as follows:

"The rights of every individual must stand or fall by the same rule or law that governs every other member of the body politic or land under similar circumstances, and every private or partial law which directly proposes to destroy or affect individual rights or does the same by affording remedies leading to similar consequences is unconstitutional and void."

Mr. Justice Field in the same railroad tax cases, on page 754, says:

"In the second place, the State in the creation of corporations or in amending their charters, or rather in passing or amending general laws under which corporations may be formed or altered, possesses no power to withdraw them when created or by amendment from the guaranties of the Federal Constitution. It cannot impose the condition * * * that they shall submit without objection to unequal and oppressive burdens arbitrarily imposed upon them; that, in other words, over them and their property the State may exercise unlimited and irresponsible power. Whatever the State may do, even with the creations of its own will, it must do in subordination to the inhibitions of the Federal Constitution. * * * But whatever property the corporations acquire in the exercise of the capacities conferred they hold under the same guaranties which protect the property of individuals from spoliation. It cannot be taken for public use without compensation. It cannot be taken without the due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under the like circumstances."

In Nebraska there is a law exactly similar to section 1289 of Code of Iowa.

It came under consideration in the highest court of Nebraska in the case of Atchison and Nebraska R. R. Co. *vs.* Baty, 6th Nebraska Reports, 37. On page 46 Judge Gant, delivering the opinion of the court, says: "If, however, the Legislature has authority by enactment to declare that for any injury of the kind in question the injured party shall be entitled to recover double the value of the property injured, then does not the authority imply the power in the Legislature to make it a hundred times the value of the property? The excess beyond the damages sustained, whatever it may be, is so much property taken from one person and given to another. If this legislative power exists in the case under consideration, why shall it not, on the same principle, apply to simple debt? And, therefore, if on demand

of the creditor the debtor fails to pay within a certain time he may, by legislative decree, be compelled to pay double, treble, or a hundred times the amount of the debt, according as the Legislature may enact; and, whatever the object of such legislation may be, it eventuates in a decree taking property from one man and giving it to another; but such legislation is repugnant to the fundamental principles of individual rights, the maxims of the common law, and the constitutional limitations, and therefore it cannot be the law of the land."

It seems impossible to escape the reasoning and the conclusions of this learned judge. It will hardly be contended that if section 1289 imposed upon corporations operating railroads one hundred times the value of property injured or killed the same could be maintained; but it would be admitted that it operated directly to deprive a person of property without due process of law, and denied to the corporations within its jurisdiction the *equal* protection of the laws.

And yet, according to this learned judge, you cannot maintain the constitutionality of double damages without conceding the constitutionality of damages a hundred times the value of the property injured or destroyed.

Suppose, as the same learned judge argues, that the Legislature of Iowa were to enact that all corporations operating railroads which should fail to pay any ordinary account it might owe for thirty days after notice similar to the one prescribed in section 1289 should be liable to double or hundred fold the amount of the debt, courts would hasten to declare such a law in violation of the Fourteenth Amendment and shocking to the fundamental principles of right and justice, and yet one is damages for killing a hog and the other damages for failure to pay an account.

This is the only case found where a law exactly similar to section 1289 has been passed upon by the highest court of a State.

This Court has never passed upon such a law.

It will be borne in mind that the laws of Iowa do not require railroad corporations to fence the tracks. The statute of Missouri *requires* railroad corporations to fence their tracks, and as a penalty for failure imposes double damage.

And so with the laws of other States which have been declared constitutional. These will be noticed under a subsequent division of this argument.

In the case of Missouri Railway Company *vs.* Mackey, 127 U. S. Reports, 205, this Court sustained the constitutionality of a law of Kansas, which was assailed because it was said to be in violation of this same Fourteenth Amendment.

That law made every railroad company liable for damage done to an employé of such company in consequence of any negligence of its agents, &c.

It is submitted that this opinion and ruling does not control the case at bar, but is wholly different from it. In that case it was only a change of liability to employés and put them on the same footing as passengers. It did not, like the Iowa statute, make the corporations liable for what they did not owe. It did not make them pay twice or a hundred times the amount of debt they owed, but only said if you injure your servant you shall be responsible, though it may have occurred by the negligence of another servant. It only made the corporations liable to all for negligence of any of its employés; it was only an extension of a rule of law which, in its application to all but employés, had always existed. This extension of the rule has been gradually going on by judicial decisions for many years, and in some of the States the Legislatures have extended it by express statutes. It is not much of a departure from the law as settled by recent decisions in many of the States. It does not take money, in shape of double damages, from one person and give it to another. It does not offer a premium to owners of stock to have it killed by giving them double the value if killed.

It only makes the law applicable to passengers apply to

employés; and although the learned justice who pronounced the opinion of the court in Mo. R'y Co. *vs.* Mackey said that legislation was not necessarily unconstitutional because it was special, he gave no instance where special legislation has been sustained which made a person pay double damages for an injury which happened without violation of express law by the party committing the injury.

The doctrine is well laid down by Mr. Justice Field in the further discussion of railroad tax cases:

"The Fourteenth Amendment to the Constitution, in declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation. Whatever the State may do it cannot deprive any one within its jurisdiction of the equal protection of the laws; and by equal protection of the laws is meant equal security under them to every one on similar terms in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort, on the same terms with others, to the courts of the country for security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. Unequal exactions in every form or under any pretense are absolutely forbidden."

Railroad Tax Cases, 13 Fed. Rep., p. 733.

Again:

"In the second place, the State, in the creation of corporations, or in amending their charters, or rather in passing or amending general laws under which corporations may be formed and altered, possess no power to withdraw them when created, or by amendment, from the guaranties of the Federal Constitution. It cannot impose the condition * * * that they shall submit without objection to unequal and oppressive burdens arbitrarily imposed upon them; that, in other words, over them and their property the State may exercise unlimited and irresponsible power. Whatever the

State may do, even with the creations of its own will, it must do in subordination to the inhibitions of the Federal Constitution. * * * But whatever property the corporations may acquire in the exercise of the capacities conferred, they hold under same guaranties which protect the property of individuals from spoliation. It cannot be taken for public use without compensation. It cannot be taken without due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under like circumstances."

The prohibition of the Fourteenth Amendment includes legislative discrimination against classes, as well as against races and individuals.

This Court declared in the civil rights cases that—

"The Fourteenth Amendment extends its protection to races and classes and prohibits any State legislation which has the effect of denying to any race or class or to any individual the equal protection of the law."

See also Missouri *vs.* Lewis, 101 U. S. R., 22.

The law under consideration gives double damages against corporations operating a railway and does not include individuals operating the same. We know that individuals may operate a railroad, and instances might be given where individuals have purchased railroads and have operated them until a new company or corporation was formed. Now, while these individuals were operating their railroad they were not within the operation of this law. They could only be made to pay single damages, while all corporations doing the same thing had, under like circumstances, to pay double damage.

Surely these corporations do not enjoy "the equal protection of the law," and do not enjoy "*exemption from any greater burdens or charges than such as are equally imposed on all others under like circumstances. Unequal exactions in every form or under any pretense are absolutely forbidden.*"

POLICE POWERS OF A STATE.

Can the constitutionality of the Iowa law be defended under the police power of a State?

It is maintained that under this police power no State can impose the penalty of double damages where there has been no violation of law by the corporation.

It will be borne in mind that section 1289 imposes this penalty on all corporations operating a railway that fails to fence the same against live stock. It is not imposed because the corporation has violated any law, nor because it has been guilty of negligence. The railroad company was not required to fence its track by the law of the State; but if it failed to fence when not required and without any negligence on its part, it was required to pay double damages for live stock killed. This seems to be pressing the police powers of a State beyond its legitimate bounds.

Tiedman's Limitation on Police Powers, page 598, lays down the doctrine as follows:

"The railroad company is, of course, liable for whatever injury is done to persons or property in consequence of any neglect to maintain the fence. In the absence of special legislation the judgment will be confined to the recovery of the actual damage suffered in consequence of the neglect; but the statute may constitutionally make the company liable for double the value of the stock killed by reason of neglect to properly maintain the fences. The requirement is justified on the same ground as the authority to recover exemplary or punitive damages. *But there must be some violation of the law or some act of negligence on the part of the railroad company in order that the company may be held liable for damages suffered by the running of the trains.*"

This seems to be the extent to which the police power of a State can be pressed. It lays down the doctrine that under this police power no State can impose double damages on a corporation operating a railway except as a penalty for violation of some duty enjoined by law.

In this case the penalty of double damages was imposed for killing live stock running at large at all points where the railroad failed to fence, unless within thirty days after notice and affidavit of loss the railroad company paid the claim of the owner.

In Bennett *vs.* A. & P. R. R. Co., 68 Mo. R., p. 56, a suit was brought to recover double damages for stock killed through failure of the company to maintain fences *as the law required.*

Hough, judge, on page 62, pronouncing the opinion of the court, said:

"It is manifest if this suit can be maintained at all it must be on the ground that it is a penal statute. Parties civilly injured are by way of recompense entitled to recover only full and adequate compensation for all damages sustained by them.

"An act of the Legislature which should provide that in all civil actions the plaintiff should recover twice the amount of damages actually sustained by him would undoubtedly be declared unconstitutional and void.

"The statute under consideration is unquestionably a penal statute. * * * While the protection of property of adjacent proprietors is an incidental object of the statute, its main and leading one is protection of the traveling public. To insure such protection the railroads are imperatively required to fence their tracks, *and the penal liability deemed necessary to enforce this requirement is a matter of legislative discretion.*"

It is true that railroads constitute property devoted to a use in which the public has an interest in, and to the extent of that interest must submit to be controlled by the public; but section 1289 does not attempt to control this question of double damages for the benefit of the public, but for the benefit of the owner of stock killed or injured, who may be as much or more to blame for its injury or destruction than the corporation operating the railway. The penalty is given, in shape of double damages, to the owner of the stock, who may be a guilty party himself, instead of to the public.

Munn *vs.* Illinois, 94 U. S. R., 113.

What are reasonable police regulations and what are proper subjects of the exercise of the police power are purely judicial questions, and a law is not the proper exercise of police power because the Legislature enacts it.

1 Rorer on Railroads, 563.

C. & C. R. R. Co. *vs.* People, 67 Ill., 11.
Sloan *vs.* Pacific R. R. Co., 61 Mo., 24.
Ladd *vs.* S. C. P. & M. Co., 53 Texas, 172.

"As in all other cases of the exercise of police power the police regulations of corporations must be confined to the enforcement of the maxim, *Sic utere tuo ut alienum non lædas.*"

Tiedman's Lim. of Police Power, 584.
Cooley's Const. Limitations, 715 and note.
Thorpe *vs.* Rutland & B. R. R., 72 Vt., 149.
Pierce on Railroads, 465.
3 Wood's R'y Laws, 1703.

But there is another feature about section 1289 which it is maintained will conflict with the Fourteenth Amendment.

The railroad company that kills live stock under the circumstances set out in the law must, within thirty days after notice, with affidavit of loss, pay the amount claimed by the owner or else pay to the owner double the value of the stock killed or injured.

The railroad corporation must pay the amount claimed, however exorbitant and excessive it may be, or double the value, after thirty days. The railroad corporation must pay the amount demanded or suffer a penalty. This, it seems, is a most barefaced attempt to take from the railroad corporation its property without due process of law.

Suppose this law to be constitutional and valid, and suppose a railroad corporation killed, under the circumstances set out in the bill, a horse worth one thousand dollars, and the railroad corporation was notified to pay, as its value,

fifteen hundred dollars, the corporation would be compelled to pay five hundred dollars which it did not owe to save the one thousand dollars forfeit.

It is no uncommon thing for owners to value their property, especially a good horse, at fifty per cent. above its true value.

Can a law be sustained which by this operation takes from the corporation at least five hundred dollars which it does not owe—takes from its treasury its money and transfers it to that of another?

This would, indeed, be to deprive a person of property without due process of law.

This and all similar laws, it is insisted, owe their existence on the statute books of some of the States to the feeling existing there against railroad corporations. It has become popular to discriminate against them. This feeling against these corporations finds its way into the jury-box, invades the legislative halls of the country, and, unless checked, it will sit beside the judge on the bench. To protect them against this popular feeling the courts of the country must be looked to; and to this Court, the highest in the world, the furthest removed from any feeling of this kind, this plaintiff in error must look for protection against this unconstitutional law and ask at its hands a reversal of the judgment of the court below.

EPPA HUNTON,
Attorney for Plaintiff in Error.

FILED.
NOV 5 1885
JAMES H. McKENNEY.
CLERK.

IN THE

SUPREME COURT

OF THE UNITED STATES.

MINNEAPOLIS & ST. LOUIS R. R. CO.
Complainant in Error.
vs.
OLIVER BECKWITH
Defendant in Error.

} MOTION TO DISMISS.

Now comes the defendant in error, Oliver Beckwith, and moves the Court to dismiss plaintiff's writ of error for want of jurisdiction and for other irregularities apparant from the record and transcript of said action.

1st. Because this Court or any judge thereof did not authorize the issuance of said writ.

2nd. Because the Clerk of this Court did not issue said writ.

3rd. Because plaintiff in error advised and consented that judgement should be entered against him in the justice court.

4th. Because the State Court did not decide the federal question.

5th. Because the pretext is frivalous: the object being delay and vexation.

Wherefore defendant in error asks that the judgement below be affirmed.

OLIVER BECKWITH,
Defendant in Error.

ARGUMENT.

1st. Writs of Error to State Courts are not allowed as of right. Field's Practice, Section 338. It being a matter of discretion with this court to allow or disallow the writ there must be an oportunity to exercise that discretion, and if issued without authority is void.

2nd. The writ must be issued to a State Court by the Clerk of this Court.

3rd. This Court will not entertain jurisdiction when it appears from the records that the judgement in the court below may be sustained on other ground than the one involved in the federal question, although there was error in the decision of the latter. Field, Section 330 and cases cited. In this case plaintiff in error advised and consented before the justice that judgement should be entered against him for the amount claimed and is estoped from claiming error thereon, the Circuit Court having no discretion but to affirm the judgement of consent.

4th. It must appear from the record that the State Court decided in this case the federal question. Field, Section 333. The citation is not a part of the record as it is no part of the proceedings of the court. Innerarety vs Byrne, 5 How. 295, and it further appearing, that plaintiff in error would not let the justice decide the federal question, advising him to enter judgement. The Circuit Court was precluded from passing upon it, Code of Iowa, Section 3597. And further plaintiff in error assigning as error, that the judgement was not supported by the evidence and the evidence being no part of the record under the laws of Iowa. Lane vs. Goldsmith, 23d Iowa, 240. State vs. Roney, 37 Iowa, 30. It was on motion of defendant in error struck from the return of the justice and not considered by the Court, and there being no evidence upon which to predicate error, the presumption is conclusive, that the hogs killed by plaintiff in error were actually worth Twenty-four dollars, amount of the judgement.

5th. A claim that a State has not authority to enact laws to protect the lives and property of its citizens is frivalous. Treadway vs S. C & St. P. R'y Co. 43 Iowa, 527. Welch vs C., B. & Q. R'y Co. 53 Iowa, 632.

The record in this case show that the only object of plaintiff in error is delay.

OLIVER BECKWITH,
Defendant in Error.

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CLERK.

Supreme Court of the United States.

No. 1061.

MINNEAPOLIS & ST. LOUIS R. R. CO., PLAINTIFFS IN ERROR,

vs.

OLIVER BECKWITH, DEFENDANT IN ERROR.

MOTION TO DISMISS APPEAL.

This case seems to be properly here by writ of error from the Circuit Court of Iowa. It seems that this case was originally tried by a justice of the peace for the county of Humbolt in the State of Iowa.

By the laws of Iowa an appeal was allowed to the Circuit Court of the said county, and that the case could not be taken to any higher court of the State.

When judgment was rendered against the defendant below he carried it to the said Circuit Court and could carry it no higher in the courts of that State.

The plaintiff in error maintains that there is a Federal question involved in the case.

That the law of Iowa found in § 1289 of the code, which authorizes a judgment against the plaintiff in error for double the value of the stock killed, is repugnant to the 1st Sect. of 14th Amendment of the Constitution of United States. That when the Circuit Court of Iowa decided this question and affirmed the decision of the court

be'ow which established the validity of § 1289—it being the highest court in that State to which the case could be carried, then the plaintiff in error had a right to appeal to the Supreme Court of the United States.

This does not seem to be questioned by the defendant in error.

But he does maintain that the plaintiff in error has not complied with the law in his effort to bring his case for review before the Supreme Court of the United States. He says:

1 "Because this court or any judge thereof did not authorize the issuance of the writ of error."

Writs of error from Supreme Court to a State Court are not matters of right, and no such writ can issue without allowance either *by the proper judge of the State Court* or by a judge of this court.

Gleason vs. Florida, 9 Wal., 779.
Bartemyer vs. Iowa, 14 Wal., 26.
Atherton vs. Fowler, 91 U. S. R. 143.

In this case James H. Mc Comber, the judge of the 14th Judicial circuit of Iowa allowed the writ on petition of plaintiff in error. He was the sole judge of the highest State court to which the case could be carried and within the above authorities he had the right as well as a judge of this court to allow the writ of error.

2d "Because the clerk of this court did not issue said writ."

This is wholly immaterial. Sec. 1005 of Rev. Statutes provide "writs of error returnable to the Supreme Court may be issued as well by the clerk of the Circuit Courts under the seals thereof as by the clerk of the Supreme Court."

Buel vs. Van Ness, 8 Wheat., 312.

"The appellate jurisdictions of this court under 25 Sect. Judiciary Act of 1789, chap. 20 may be exercised by a writ of error issued by the clerk of a Circuit Court under the seal of that court * * * *

See also Mussino vs. Cavazos, 6 Wal., 355.

3d. "Because plaintiff in error advised and consented that judgment should be entered against him in the Justice court."

This is a mistake. By reference to the record it will be found that the plaintiff in error—the defendant below—admitted there was evidence on which a judgment might be rendered against him for the *value* of the hogs. That he always resisted the judgment actually given for *double the value* of the hogs, and maintained that the Iowa statute authorizing such a judgment was unconstitutional and void. In no sense was this a judgment by consent.

United States vs. Eliason 16 Pet. 291.

4th. "Because the State court did not decide the Federal question." By reference to the record this will be found to be a mistake also.

The petition or complaint claimed the sum of thirty dollars, double damages for killing three hogs of the value of fifteen dollars. The answer denied the allegations of the complaint and expressly maintained that the law of Iowa is an unlawful and unjust discrimination against the defendant in court below and different from the liability imposed in like cases on other persons, and by it the said defendant is denied the equal protection of the laws guaranteed by the 14th Amendment to Constitution of U. S. That said law of Iowa is in conflict with the said 14th. Amendment and because the plaintiff's

right to recover double damages is based on that law alone, he should not recover.

The judgment was for double the value of the hogs as proved. Of course it was given by virtue of §1289 of the Code of Iowa and the court did actually decide the Federal question involved–without deciding this question it was impossible to give the judgment rendered.

5th. "Because the pretext is frivolous—the object being delay and vexation."

This is positively denied.

The object of the plaintiff in error is to annul and declare void and unconstitutional, § 1289 of the Code of Iowa by which an unjust discrimination is made against it, and under the operation of which unjust and illegal penalties are visited on it and to which other persons are not subject.

EPPA HUNTON,
JEFF CHANDLER,
For Plaintiff in Error.